

June 13, 2019

Mr. Henry A. Leskinen  
Eco-Science Professionals, Inc.  
P.O. Box 5006  
Glen Arm, Maryland 21057

Re: Mallard Road 6715  
6715 Mallard Road  
Middle River, Maryland 21220  
Critical Area Administrative Variance  
DEPS Tracking Number: 06-18-2880

Dear Mr. Leskinen:

The Department of Environmental Protection and Sustainability (DEPS) has completed an evaluation of your variance request, in accordance with Section 33-2-205 of the Baltimore County Code, to allow the clearing of greater than 30 percent of forest on site in the Critical Area for a new dwelling, well, sand mound septic system and yard. Specifically, the construction of the project will result in the removal of 38,172 square feet (sf) of forest. This represents forest clearing of 60.06 percent on this 1.46 acre, entirely forested site. The non-waterfront property, designated as a Limited Development Area of the Chesapeake Bay Critical Area, is located in Middle River, on the south side of Mallard Road in the Bird River Beach section of Baltimore County. No wetlands, streams or floodplains are present on or adjacent to the property.

The Director of DEPS may grant a variance from the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The site is not serviced by public water and sewer, necessitating a private well and septic system. It would not perc conventionally, therefore, a sand mound system was required, along with a back-up system, in the event that one failed, requiring additional forest clearing. The site is relatively small to construct a dwelling and sand mound systems, while limiting forest clearing to less than 30 percent of an entirely forested site. After consideration of the constraints, including the required setbacks from the road, the

required minimum 35-foot setback from the proposed Critical Area Easement for a reasonably sized yard, the sand mound systems and maintenance access area, the design proposal shown on the plan submitted with this variance request results in the least impacts to the forest to be retained (CAE). Literal enforcement of the regulations would constitute an unwarranted hardship. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. If there were literal enforcement of the regulations, the applicant would be deprived of the ability to construct a reasonably-sized dwelling on the property and the use of a practical yard and other, ordinary residential uses, all of which are enjoyed on similar properties in the area. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. The construction of the dwelling and associated residential features within the Critical Area on a similar property with similar constraints would not be denied, if all other criteria for a Critical Area Variance were met. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. This variance request is required because forest clearing in excess of 30 percent of the forest on site is proposed to meet requirements to construct a dwelling, sand mound septic and back-up system, and yard. Other than septic system testing, construction has not started on the property, and the applicant is not requesting this variance due to conditions on neighboring properties. Therefore, the fourth criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The project will have no direct impacts to tidal waters, tidal wetlands, non-tidal wetlands or tributary streams (fish habitat). These resources are not present on or immediately adjacent to the property. Any adverse impacts to wildlife or plant habitat will be minimized and mitigated by the recordation of a Critical Area Easement on site, comprising approximately 25,386 sf, along with the associated Declaration of Protective Covenants, and the payment of a fee-in-lieu of planting for forest

clearing. Granting of this variance will be in harmony with the spirit and intent of the Critical Area Regulations. Therefore, the fifth criterion can be met with mitigation.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by the full implementation of and approved Critical Area Management Plan and recordation of the Critical Area Easement along with the associated Declaration of Protective Covenants. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. Mitigation for 38,172 sf of forest clearing shall be provided at a ratio of 3:1, for a mitigation requirement of  $114,516 \text{ sf} \times \$0.50 \text{ per square foot} = \$57,258.00$ . This shall be accomplished in accordance with an approved Critical Area Management Plan, per COMAR 27.01.09.01, which must be approved prior to the issuance of any permit. All fees-in-lieu must be received by this Department prior to the issuance of any permit.
2. The Critical Area Management Plan must include permanent "Critical Area Easement-Do Not Disturb" signage posted along the Critical Area Easement boundary in approved locations, and temporary, orange, high-visibility fence installed along the limit of disturbance (LOD) where the LOD is within 50 feet of the Critical Area Easement. Approval of the plan, and installation of the signage and fencing, shall be completed and inspected prior to DEPS approval of any permit.
3. The Critical Area Easement, comprising approximately 25,386 sf (0.58 acre), shall be recorded, via the Exhibit A process, in the Baltimore County Land Records along with a Declaration of Protective Covenants that restrict use and disturbance of the area. The recordation must be completed prior to approval of any permit.
4. Add the following note to all plans for this project, including the Critical Area Management Plan: "A Critical Area Variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from the Baltimore County Code, Article 33, Environmental Protection and Sustainability, Title 2, Chesapeake Bay Critical Areas Protection for the purposes of clearing 38,172 sf (greater than 30%) of forest for the construction of a single-family dwelling, sand mound septic systems, driveway and associated yard. Variance approval conditions include the recordation of a Critical Area Easement, installation of permanent Critical Area Easement-Do Not Disturb signage, and the payment of a fee-in-lieu of

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planting as mitigation. These conditions were placed on this variance to reduce water quality impacts.”

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article, Section 8-1808 (d))6(ii).

Please have the property owner(s) sign the statement below, and return the original copy of this letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Thomas Panzarella at 410-887-3980.

Sincerely,

David V. Lykens  
Director

DVL: tcp  
c: Ms. Susan Makhoulf, Critical Area Commission

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I/We have read and agree to implement the above requirements to bring my/our property, located at 6715 Mallard Road, into compliance with the Chesapeake Bay Critical Area regulations.

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Property Owner(s) Signature(s)

Date

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Printed Name(s) of Owner(s)